

Jenner & Block Secures Compassionate Release of Pro Bono Client under First Step Act

Publications

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Recently, US District Judge Sharon Johnson Coleman exercised her powers under the First Step Act and granted the petition for compassionate relief we filed on behalf of our client, Tracy Conley. By this ruling, Judge Coleman released Mr. Conley from prison more than five years before the end of his sentence.

Mr. Conley was convicted of participating in a conspiracy to rob a drug “stash house.” The stash house was entirely fictional, however, as were the drugs it supposedly contained and the armed men who supposedly guarded it. This case was one of many in which an undercover government agent presented a target with the opportunity to get rich. The scheme began in 2011, when a government agent presented Myreon Flowers with the opportunity to rob a fictional stash house. To trigger steep mandatory sentences, the agent stated the stash house contained a huge quantity of drugs and encouraged Mr. Flowers to recruit others and bring guns.

Mr. Conley became involved only because of what the Seventh Circuit described as two strokes of bad luck: On November 1, 2011, Mr. Conley went to work as usual, but was sent home because a piece of machinery had broken at the factory where he worked. On his way home, he stopped at a gas station where he ran into an old acquaintance. Unbeknownst to Mr. Conley, that acquaintance had joined Mr. Flowers’s group, which had planned the robbery for that very day. Mr. Conley agreed to go with his acquaintance, Mr. Flowers, and the others to what he thought was a job to clean a vacant apartment. On the way, government agents surprised the men and arrested everyone.

All of Mr. Conley’s co-defendants accepted plea deals for lesser charges. Mr. Conley maintained that he knew nothing of the plan to rob a (fake) stash house, but was convicted after a jury trial. Because his charges carried mandatory minimum sentences, Mr. Conley was sentenced to 15 years in prison – twice as long as any other co-defendant. In the years following Mr. Conley’s conviction, the fake stash house program received significant scrutiny. As more prosecutions emerged, so too did evidence suggesting that the government’s selection of targets for the scheme may have been racially motivated. Under increasing criticism, the government abandoned the program. One by one,

Mr. Conley's co-defendants served their lesser sentences and were released, but Mr. Conley remained in prison.

In 2018, Mr. Conley filed a pro se habeas petition, and Judge Coleman appointed Mike to represent Mr. Conley. Leigh joined the team at the start, as did Theo, who was part of the team for the habeas briefing. Eric joined the team last fall. Judge Coleman denied the habeas petition, but certified for appeal the argument that Mr. Conley's conviction should be reversed on due process grounds, and because the fake stash house scheme targeted people of color. The team is continuing to prosecute that appeal.

With the habeas appeal being briefed, the team filed a motion for a sentence reduction under the First Step Act, also known as compassionate release. Leigh and Eric argued the motion in January, under Mike's supervision. On March 4, Judge Coleman granted the motion and ordered Mr. Conley's sentence reduced to time served. Judge Coleman accepted the team's arguments that the circumstances demonstrated extraordinary and compelling reasons for compassionate release. She noted that Mr. Conley had never even met Mr. Flowers before the day of the planned "robbery," and that Mr. Conley's sentence was driven by the government's decision of what charges to bring, not the Court's decision of what sentence was warranted. That sentence was "grossly disproportionate," "devoid of true fairness," and served "no real purpose other than to destroy any vestiges of respect in our legal system and law enforcement that this defendant and his community may have had." His disproportionate sentence was a "trial tax." She concluded that "if there ever was a situation where compassionate release was warranted based on the injustice and unfairness of a prosecution and resulting sentence, this is it."

Mr. Conley was released on March 17, after serving nearly 10 years in prison. He is now home.

Partner Michael T. Brody and Associates Leigh J. Jahnig, Eric S. Fleddermann, and Theo A. Lesczynski represented Mr. Conley in this important matter.

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